on the evidence, of greater value than the time of the other five partners (the plaintiff is not shown to have any valuable occupation, the fourth defendant is an infant and the seventh a woman, though the fifth and sixth defendants are actively engaged in the business).

No reason is given why the fifth and sixth defendants, who reside in the Federated Malay States, desire the litigation to proceed in Singapore: it is therefore impossible to determine the force of their reasons.

Argument (e), in my opinion, ought not to have much weight attached to it, as it should be possible within 2 weeks to obtain protection of the plaintiff's interest by the appointment of a Receiver, should the circumstances warrant it, by the Court of the Federated Malay States; in fact, I doubt whether any weight ought to be attached to this argument, if on other grounds it is just that the litigation should proceed in the Federated Malay States; in any case argument (e) is, in my opinion, of less weight than the combined effect of arguments (6) (7) (8) (9) (10) and (11).

The general rule is that defendants have the right to be sued in the country where they reside. If there is any doubt, it ought to be resolved in favour of the foreigner *(The Hagen)* (1908) P. 189 at 204.

Order accordingly.

Solicitors for the 1st Defendant—*Allen & Gledhill.*

Solicitors for the Plaintiff—*Braddell Bros.*

Solicitor for the 5th and 6th Defendants—*Claude da Silva.*

[ORIGINAL CIVIL JURISDICTION]
TERRELL, J.
April 17, 1935.

HAJEE AMEER BIN HAJEE MOHAMED SALLEH PITALOLO.....Plaintiff.

vs.

TAN KENG NEO.....Defendant.

[SINGAPORE SUIT No. 710 of 1933]

Garnishment—Civil Procedure Rules 1934 O. XLIII.

A Judgment was obtained by the Plaintiff against the Defendant and in respect of that Judgment a Writ of Seizure and Sale was issued in the lifetime of the Defendant. The Defendant died. Subsequently the Judgment Creditor caused to be issued first a garnishment notice and that a garnishment summons addressed to a person having in his hands the balance of certain insurance moneys payable on the death of the Judgment debtor and actually received by the garnishee shortly thereafter. Until after the issue of the garnishment summons no order was made adding any person to represent the estate of the deceased Judgment debtor.

Held, that no execution had in fact been levied until after the death of the Judgment debtor and that the Judgment creditor was not entitled to an order against the garnishee who must hold the money on behalf of the estate of the Judgment debtor and pay it over to the legal representative of such estate when appointed.

Summons in Chambers.

Cobbett for Judgment Creditor (Plaintiff).

Johannes for Debtor.

The facts and arguments sufficiently appear from the Judgment.

Cur. Ad. Vult.

TERRELL, J.—In this case the plaintiff recovered judgment against the defendant on the 2nd October, 1933, and on the 13th March, 1934, a Writ of Seizure and Sale was issued. The property of the defendant seized under this writ was certain immovable property in Malacca. I understand that this has been sold but that the net proceeds were not sufficient to satisfy the judgment debt of which a balance remains unpaid.

On the 23rd October, 1934, the defendant died. The deceased had taken out a policy of life assurance which had been charged to R.M.P.A. Ramasamy Chettiar. The Chettiar has received the full amount of the insurance moneys and after satisfaction of his debt a balance remains in his hands. The judgment creditor has attempted to seize this balance by means of a garnishment notice issued on the 14th February, 1935, and this Garnishment Summons was issued on the 11th March, 1935. No Letters of Administration have been taken out to the estate of the deceased but by an order made on the 5th April, 1935, his widow Chew Aye Neo was appointed under Order 16 Rule 42, to represent his estate for the purpose of these proceedings. The issue is between the judgment creditor and the creditors of the estate of the defendant which, I understand, is insolvent.

The plaintiff has argued that all the property of the defendant was seized under the Writ of Seizure and Sale, that under our law this would include property seizable under a garnishment notice and that it is the duty of the Sheriff to proceed with the execution as he would in England under a Writ of *Fi. Fa.* notwithstanding that the death of the judgment debtor has intervened (see *Hailsham* Vol. XIV p. 17 par. 30). In my opinion this argument is founded on a false analogy, the distinctions between the local Writ of Seizure and Sale and the English Writ of *Fi. Fa.* being very material.

Under the English Common Law a Writ of *Fi. Fa.* bound all the goods of a debtor within the

bailiwick of the Sheriff to whom it was directed from the date of the issue of the writ. This was modified by the Sale of Goods Act, 1893, section 26, and as a result the goods are bound from the time that the Writ is issued. In the case of goods therefore there is a notional seizure of all the debtor's goods from the date of delivery of the Writ and no actual seizure is necessary. There is no reason therefore why in the case of goods which have already been notionally seized the Sheriff should not proceed to complete the execution even after the debtor's death.

It has been held in England, *Johnson* v. *Pickering*, 1908, 1 K.B. p. 1, that the position is quite different in the case of money, notes, cheques, etc. which are seized under a Writ of *Fi. Fa.* by virtue of section 12 of the Judgments Act, 1838. In this case there is no notional seizure and the money, etc. is not bound until it has been actually seized. Accordingly it was held that after the death of the judgment debtor the trustee under an administration order in bankruptcy had a better title to a sum of money which was in the debtor's house but which the Sheriff knew nothing about and had not accordingly taken into his possession.

Again, in England garnishment is effected under English Order 45 Rule 1 by obtaining an order of attachment. There can, I think, be no doubt that in such a case a debt is only attached from the date of the order and it could not be argued that a debt which had not in fact been attached at the time of the debtor's death had been notionally seized by a Writ of *Fi. Fa.* or any other method of execution.

It is true that garnishment in the Colony is effected in rather a different way by means of a garnishment notice under Order 41 Rule 4, and that a garnishment notice is one of the methods of implementing a Writ of Seizure and Sale. But the chief difference between a Writ of Seizure and Sale and a Writ of *Fi. Fa.* is that in the former case there is no notional seizure at all. Rule 1 provides that immovable property may be seized by registering under Ordinance No. 148 (Registration of Deeds) an Order of Court attaching the interest of the Judgment debtor in the lands described therein. Under Rule 2 goods and chattels are seized by being taken into the Sheriff's custody. Under Rule 3 stocks and shares are seized by a notice sent by registered post to the Treasurer, the Municipal President, or the registered office of the Company as the case may be; and under Rule 4, as stated above, debts owing to the judgment debtor are seized by a garnishment notice. In each case the actual seizure is effected by the performance of the particular acts prescribed, and unless and until these acts have been performed there is clearly no seizure.

In the present case the policy moneys could not have been seized before the defendant's death because it was only then that they were payable. No doubt the plaintiff could have obtained execution upon the surrender value of the policy during the defendant's lifetime, but he did not do so, probably because such surrender value would have been less than the Chettiar's charge. Whatever the reason, no execution was in fact levied until after the defendant's death. The position is exactly analogous to the seizure of money under a Writ of *Fi. Fa.* where the procedure is governed not by the Sale of Goods Act, 1893, but by the Judgments Act, 1838. The plaintiff accordingly is not entitled to an order against the garnishee who must hold the money on behalf of the defendant's estate and pay it over to the representative of such estate when appointed.

Order accordingly.

Solicitors for Judgment Creditor (Plaintiff)—*Rodyk & Davidson.*

Solicitors for Debtor—*Johannes & Sammy.*

END OF THE STRAITS SETTLEMENTS OFFICIAL REPORTS.